

Officer's Guide to Body Cameras

2017

Training Bulletin
for Spokane Police Officers

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I. A WORD ABOUT PRIVACY AND BODY CAMERAS

The Work of the Body Camera Parallels the Work of the Police Officer

Body cameras serve three primary functions in police work, each of which parallels the work of the police officer. First, recording citizen encounters adds an additional “observer” to a police incident. This “observer”, albeit mechanical, captures the incident, encounter or conversation much in the same way that a police officer does when on scene at an incident or in communication with a witness. In many ways, the camera is a separate eyewitness to an event; it observes from its own angle and point of view.

Second, recording encounters with citizens adds a layer of documentation to a police incident. Like a written police report, the recording also preserves what it observed from the incident, encounter or conversation much in the same way that a police officer does when recalling the events and documenting those events in the incident report. Much like an officer encounters, observes and then documents an incident related to a police call, a body camera affixed to the officer’s lapel enters the scene, observes it and then memorializes by a video recording.

Third, the footage from body cameras serves as potential evidence in court cases. Like any written statement or the sworn testimony of the police officer witness, recordings consist of evidence with the capability to corroborate or impeach the statements of others. Just as police officers are often called, in both criminal and civil cases, to give testimony on matters to which they responded in the course of their duties as law enforcement officers, the recordings from body cameras may be used for evidentiary purposes in court proceedings.

Body Cameras go where police officers go, and...

1. Observe in ways similar to how officers observe,
2. Document (by recording) the encounter, and
3. Are available to recapture the event at an evidentiary hearing.

Privacy Concerns Parallel Attitudes about the Role of Police

The level of concern toward body cameras, and the recordings that they generate, parallels the public’s concern toward police officers and the role they play in the private matters of citizens. Privacy concerns relative to body cameras tend to track fears about needless or unwarranted government intervention and, as such, touch upon the intrusion into and disclosure of information of a non-evidentiary nature.

Privacy objections to the use of officer testimony as evidence in court are rare and tend to be overridden by its legitimate use as evidence. In general, privacy concerns are not the source of objections to the use of body camera recordings where they

are to be used as evidence in a criminal or civil case. Few complaints are ever lodged on the basis of an officer thoroughly documenting an investigation.

The privacy of citizens becomes an issue insofar as the recorded videos of police encounters may be accessed for reasons other than legitimate evidentiary purposes. This is a matter for Police Records to consider, but not one which should concern the patrol officer. Because police officers respond to a wide range of matters (including calls that are unrelated to crime), fears logically arise when images of citizens suffering from medical emergencies, or who are otherwise depicted in vulnerable situations, are made available for public viewing. It is therefore the concern about what becomes available for public viewing that drives the discussion about privacy and body cameras rather than what is recorded by the camera that is worn by the officer. While there are certainly differences of opinion, most advocates of body cameras strongly favor more recording as opposed to less, and they overwhelmingly want officers to leave the cameras running.

The issue of privacy, therefore, should not be an obstacle for the police officer. The body camera “rides along” with the officer and will record everything that the officer encounters. As such, the police officer wearing the body camera should understand that he/she is not responsible for the content that the body camera records, or for what footage is or is not released from that recording. Just as the officer cannot control what he/she encounters on a given call for service or while on a routine patrol, the body camera will record whatever the officer happens upon from a second vantage point during the course of a shift. As distinguished from the videos that are accessed for discovery, public records laws will dictate what the public and the media may obtain by way of body camera videos.

The body camera “rides along” with the officer and records what the officer encounters. It is the law that governs what the public may see from those videos.

II. PUBLIC DISCLOSURE: WORRYING ABOUT WHAT GETS RELEASED

Videos are Public Records

It is important for police officers to know what happens with the videos and what sort of review occurs when copies are requested by citizens or by the media. Videos generated from body cameras are “records” within the meaning of the Public Records Act, Chapter 42.56 RCW. When requests are made under this chapter, it is the Police Records Unit which processes all such requests. The Police Records Unit (“Records”) is the gatekeeper of what gets released.

Within Records, there are specific individuals who are trained – both in the Washington Public Records Act and in the Axon Taser technology and the use of Evidence.com for purposes of redacting video. Although the process is different,

video is redacted just as paper records are redacted. All releases of video go through a process which assures that the privacy of citizens is respected while meeting the requirements of state law in the disclosure of video that is of legitimate public interest.

State Law Offers Many Privacy Exemptions

When an officer clearly indicates that a witness has requested the nondisclosure of his/her identity, the Records specialist will redact out that person's image from the video. It is easiest to spot this request if the officer also includes this statement on the video.

Most concerns about privacy relate to the people who appear on the video, how they are depicted and the embarrassment of disclosure to those individuals. Because cameras can capture a wide range of people in various situations, the question often arises whether the identity of certain people can be protected. The answer is to that question is overwhelmingly – yes. State law offers many privacy exemptions that should adequately address any concerns about what is released.

The following investigative, law enforcement, and crime victim information is exempt from public inspection and copying under this chapter:

Body worn camera recordings are exempt from disclosure to the extent that nondisclosure is essential for the protection of any person's right to privacy because it is presumed to be highly offensive to a reasonable person under RCW 42.56.050. This includes:

- a. **The Interior of a Place Of Residence** where a person has a reasonable expectation of privacy;
- b. **Medical, counseling, and therapeutic treatment facilities**
(i)(A) Any areas of a medical facility, counseling, or therapeutic program office where:
(I) A patient is registered to receive treatment, receiving treatment, waiting for treatment, or being transported in the course of treatment; or
(II) Health care information is shared with patients, their families, or among the care team; or
(B) Information that meets the definition of protected health information for purposes of the health insurance portability and accountability act of 1996 or health care information for purposes of chapter 70.02 RCW; RCW 42.56.240(14)(a).
- c. **An Intimate Image** as defined in RCW 9A.86.010;
- d. **A minor**
- e. **The Body of a Deceased Person**

- f. **All Communications (Not Just Identity) of a DV Or Sexual Assault Victim or Witness** as defined in RCW 70.125.030, or disclosure of intimate images as defined in RCW 9A.86.010. If at the time of recording the victim or witness indicates a desire for disclosure or nondisclosure of the recorded identity or communications, **such desire shall govern**.
- g. **Shelters** - The identifiable location information of a community-based domestic violence program as defined in RCW 70.123.020, or emergency shelter as defined in RCW 70.123.020.

These presumptions may be rebutted by specific evidence in individual cases.

Additionally, the Records Unit may also consider the following in determining how videos should be redacted:

- **Witnesses who wish their identity not be disclosed**
This redaction strikes out the image of, and any contact information for, witnesses who request the nondisclosure of their identity. RCW 42.56.240(2)

This is the simplest and most effective exemption, and the Public Records Act clearly states that “the request for nondisclosure shall govern.” When an officer clearly indicates – on the recording and in the incident report – that a witness has requested the nondisclosure of his/her identity, the Records specialist will redact out that person’s image from the video.

It is easiest to spot this request if the Officers include this statement on the video. They may ask witnesses about their wishes regarding disclosure and, when writing their reports, should indicate the individual’s request for nondisclosure. In so doing, the officers can do their part to protect individuals from the embarrassment of disclosure.
- **Witnesses who fear for their safety**
This redaction strikes out the image of, and any contact information for, witnesses who have expressed fear for any person’s life, physical safety, or property. RCW 42.56.240(2). Officers may document in the incident report their observations concerning the witness’s expression of fear.
- **Trafficking Victims**
This redaction strikes out the image of, and any contact information for, victims of trafficking since such victims are heavily pursued and subject to substantial retaliation. Trafficking victims often have great difficulty escaping the violence and victimization and require all available efforts to protect them. This redaction is in accordance with the legislative intent that law enforcement agencies protect the victim and take all reasonable steps to prevent further abuse. RCW 40.24.010; RCW 10.99.030(5); RCW 10.99.010; RCW 42.56.240(2)

- **Stalking Victims**

This redaction strikes out the image of, and any contact information for, victims of stalking since stalking victims are often on the move to escape their stalkers. These victims require protection to prevent being located and re-victimized. This redaction is in accordance with the legislative intent that law enforcement agencies protect the victim and take all reasonable steps to prevent further abuse. RCW 40.24.010; RCW 10.99.030(5); RCW 10.99.010; RCW 42.56.240(2)

- **Persons who cooperate with Law Enforcement**

This redaction strikes out the image of, and any contact information for, confidential informants. Considered intelligence information, used in a confidential manner for law enforcement purposes, protected to preserve the life and personal safety of the informant and family. RCW 42.56.240(1) Specific intelligence information compiled by law enforcement, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy. *Ashley v. Public Disclosure Comm'n*, 16 Wn.App. 830, 836 (1977).

- **Persons with Apparent Mental Illness in Crisis**

This redaction strikes out the image of, and any contact information for, persons with apparent mental illness who are experiencing crisis. This redaction contains confidential information concerning services to either voluntary or involuntary recipients of mental health services. Such information, if disclosed, would invade an individual's privacy and possibly cause unintended consequences for that individual. This redaction contains confidential information concerning a mental health detention under RCW 71.05. Such information, if disclosed, would invade an individual's privacy and possibly cause unintended consequences for that individual; RCW 42.56.230, 42.56.250, 42.56.210(1).

- **Person Detained for Mental Health Hold**

This redaction strikes out the image of, and any contact information for, any individual undergoing a civil detention or mental hold pursuant to RCW 71.05, or who is being transported for a competency evaluation pursuant to RCW 10.77. This redaction contains confidential information concerning a mental health detention under RCW 71.05. Such information, if disclosed, would invade an individual's privacy and possibly cause unintended consequences for that individual; RCW 42.56.230, 42.56.250, 42.56.210(1).

The Police Records Unit is well versed in privacy exemptions for body camera footage. Officers should trust that Records will scrutinize the video for appropriate legal exemptions prior to public disclosure release.

Can anyone obtain body camera videos upon demand?

Requests For Body Worn Camera Recordings Must Be Specific:

- Specifically identify a name of a person or persons involved in the incident;
- Provide the incident or case number;
- Provide the date, time, and location of the incident or incidents; or
- Identify a law enforcement or corrections officer involved in the incident or incidents.

Requesters are Required To Identify Themselves and Provide Information as Necessary To Comply With This Section:

A law enforcement or corrections agency may require any person requesting a body worn camera recording pursuant to this subsection (14)(e) to identify himself or herself to ensure he or she is a person entitled to obtain the body worn camera recording under this subsection (14)(e), and to establish whether inspection and copying would violate RCW 42.56.070(9) or 42.56.240(14).

“The 14(E) Requesters”: Not Charged The Costs Of Redaction

- A person directly involved in an incident recorded by the requested body worn camera recording,
- An attorney representing a person directly involved in an incident recorded by the requested body worn camera recording,
- A person or his or her attorney who requests a body worn camera recording relevant to a criminal case involving that person, or
- The executive director from either the Washington state commission on African-American affairs, Asian Pacific American affairs, or Hispanic affairs, or
- An attorney who represents a person in a civil rights lawsuit or DOJ settlement agreement. The attorney must explain the relevancy of the requested body worn camera recording to the cause of action and specify that he or she is seeking relief from redaction costs under this subsection (14)(e).

All Others – (Will Be Charged For The Cost Of Redaction)

III. ACTIVATING THE BODY CAMERA

A. When To Start The Recording

A police officer should activate his or her camera immediately upon receiving the initial information from Police Radio that results in dispatching the officer to any situation that could be construed as a law enforcement activity. Law enforcement activities include traffic stops, arrests, searches, interrogations, and pursuits. For self-initiated law enforcement activity, the officer should

~~activate the camera upon making the decision to engage a citizen for any reason.~~

Officers should turn on their cameras immediately as soon as they self-initiate or are dispatched to a call. Waiting to activate until arrival on scene can result in officers forgetting to activate.

B. When to end the recording

Officers may turn off their cameras at the conclusion of any law enforcement activity or citizen encounter. What constitutes a conclusion may depend on facts and circumstances, but officers should not terminate the recording before the conclusion of all interactions with citizens related to the encounter.

C. Activating the camera during rapidly evolving calls

Officers do not always have the ability to activate the body camera at the moment when a tense situation arises. Officers should therefore activate their cameras immediately upon receiving information from Radio that dispatches them to any situation that could constitute a law enforcement related encounter.

IV. GIVING THE NOTIFICATION: IS IT EVEN NECESSARY?

In most circumstances, uniformed officers responding to calls and interacting with citizens do not need to notify persons present that the interaction is being recorded. The Washington Privacy Act only applies to private conversations. Conversations between members of the public and police officers who are performing their official duties are not generally considered private.

HOWEVER, the rules change when an officer wants to question someone they've arrested.

Custodial Interrogations – Advisement is Required

When a person is placed in custody and you intend to ask them questions, then you must tell them they are being recorded. The Washington courts require the recording to include the advisement, the Miranda warnings and the date and time both at the beginning and end of the recording.

Prior to a custodial interrogation, you must say the following on tape:

- “Today is [state the date] and the time is [state the time].”
- “This conversation is being audio and video recorded with a body camera.”
- Recite the Miranda warning (constitutional rights):

At the conclusion of the interview, you must state on tape:

- “This concludes the interview. “Today is [state the date] and the time is [state the time].”

Failure to give this advisement may cause your video to be suppressed at a trial.

Other Considerations Regarding the Advisement

Uninvolved Third Parties Inside a Residence

If you are lawfully inside a residence, keep in mind that uninvolved “third parties” inside a home (persons you not there to talk to or investigate) should be told that you are recording with a body camera. It is these third parties that may have separate Article I section 7 interests and may assert claims of privacy violations.

Non-English Speakers and Deaf Persons

Officers should make an effort to ensure that non-English speakers, those with limited English proficiency, deaf persons, or persons hard of hearing understand that they are being recorded. These efforts, where applicable, should be documented.

V. TURNING OFF THE CAMERA: WHAT ARE RULES?

Police officers should default to leaving the camera on. If they must turn it off, however, officers should carefully document why they made that decision and the name of the person, if any, who requested that the camera be turned off.

A. When Unsafe or Impractical

Officers may opt to not record an encounter when doing so would be unsafe, impossible, or impractical. Officers should articulate in writing their reasons for not activating the camera. Similarly, they should document their reasons – including stating on camera – why they are turning the camera off.

B. Not Necessary to Turn Off the Camera at the Request of the Citizen

If a citizen objects to being recorded, the officer may continue to record the encounter. There is no civil or criminal liability for doing so because it is not a violation of the Privacy Act to record a non-private conversation, and Washington courts have made clear that conversations with police officers are not private. See, e.g., *Kipp*, 179 Wn.2d at 732; *Lewis*, 157 Wn.2d at 460.

Even if a citizen were to disagree about whether a conversation is private, that citizen’s objection to being recorded would be enough to eliminate any liability concerns since the objection itself acknowledges awareness that the conversation is being recorded and therefore meets the requirements of the Washington Privacy Act.

C. What if I can't get cooperation unless I turn it off?

If turning off the body camera is necessary to effective law enforcement and that is the only way to obtain a statement from a witness, then the officer may turn it off. The incident report should clearly document that this decision was made only because of the witness's request.

D. Hospitals and Medical Facilities

Whether officers can record in hospitals or medical facilities depends on the facts surrounding the call.

a. Not Necessary to Turn Off the Camera When Called to a Crime Occurring at the Hospital or Medical Facility

Where the police are called to respond to a crime which has occurred or which is occurring at the hospital or medical facility, there is no requirement to turn off the body camera. Where there is no danger of exposing *Protected Health Information* ("PHI") of any patients in the treatment or procedure area, the presence of a body camera poses no issues.

Still, a hospital administrator or clinic coordinator may request that an officer turn off the body camera to protect the identity of unrelated patients at the facility. If such request is made, the officer should clearly document in the incident report the name of the individual making such request and the fact that the camera was turned off based on this request.

b. Officers Must Turn Camera Off When Accompanying an Offender or Victim of Crime to a Medical Facility

When police officers accompany an offender or victim to a medical facility or hospital for treatment, they must turn off their body cameras so as not to expose *Protected Health Information* ("PHI") of the offender, victim or any patients in the treatment or procedure area. Officers should clearly document in the incident report their reasons for turning off the camera; in this instance, officers would cite *HIPAA* and the need to preserve the confidentiality of *Protected Health Information*.

E. Medical Emergencies – No Need To Turn Camera Off

Where the police are called to respond to a location where an individual is experiencing a medical emergency, there is no requirement to turn off the body camera. Records will redact the video to protect the identity of the individual experiencing the emergency. The officer may be asked to turn off the camera, however. If such request is made and the officer feels it is appropriate to honor that request, the officer should clearly document in the incident report the name

of the individual making such request and the fact that the camera was turned off based on this request.

F. Mental Health Crisis Situations – No Need To Turn Camera Off

Where the police are called to respond to a location where an individual is experiencing a mental health crisis, there is no requirement to turn off the body camera. Records will redact the video to protect the identity of the individual experiencing the crisis. The officer may be asked to turn off the camera, however. If such request is made and the officer feels it is appropriate to honor that request, the officer should clearly document in the incident report the name of the individual making such request and the fact that the camera was turned off based on this request.

G. Missions and Homeless Shelters – No Need To Turn Camera Off

Where the police are called to respond to a mission or homeless shelter, there is no requirement to turn off the body camera. Records will redact the video, if appropriate, according to any statutory exemptions which may apply. The officer may be asked to turn off the camera, however. If such request is made and the officer feels it is appropriate to honor that request, the officer should clearly document in the incident report the name of the individual making such request and the fact that the camera was turned off based on this request.

H. Battered Women Shelters – No Need To Turn Camera Off

Where the police are called to respond to a battered women's shelter, there is no requirement to turn off the body camera as long as the recording does not reveal the location of the safe house and honors all other guidelines for keeping victims safe. Records will redact the video according to any statutory exemptions which may apply. The officer may be asked to turn off the camera, however. If such request is made, the officer should clearly document in the incident report the name of the individual making such request and the fact that the camera was turned off based on this request.

I. Sexual Assault Victims – Use Discretion, but Document Your Reasons

When contacting victims of sexual assault, officers should use discretion in deciding whether to record the interview and/or encounter. There is no requirement to turn off the body camera, but if turning off the body camera is necessary to respect the dignity of the victim and to conduct a meaningful investigation, then the officer may turn the camera off. The incident report should clearly document why this decision was made and at whose request. If the matter is recorded, Records will redact the video according to any statutory exemptions which may apply.

J. Death Notifications – Use Discretion, but Document Your Reasons

Where the police must deliver a death notification, officers should use extreme discretion and regard for the individuals receiving the notification. In this situation, it is appropriate to turn off the camera. If the officer feels that circumstances warrant recording the encounter (or if the notification should be inadvertently recorded), Records will redact the video according to any statutory exemptions which may apply. If the officer decides to turn the camera off, he/she should clearly document in the incident report the nature of the incident and the fact the camera was turned off for this purpose.

K. Private Residences – No Need To Turn Camera Off

To Announce or Not To Announce

A. Conversations Directly Between a Citizen and a Police Officer

The Washington Supreme Court has unequivocally held that conversations between a police officer and a citizen that occur in the performance of the officer's official duties are not private. Even within a private home, a conversation between a citizen and a police officer performing his or her official duties is not considered private and therefore not protected under the Washington Privacy Act.

B. Conversations Between Two or More Private Citizens

Where there are two or more individuals inside a private residence, the police officer should announce her presence and the fact that she is recording. Thereafter, any private communication between the parties would be deemed not private or, alternatively, the recording would be deemed consensual.

Be aware, however, that an officer's body camera could inadvertently intercept and record a private conversation between two or more other individuals in a private home. Such a conversation, "overheard" by the body camera, would require a warrant or consent prior to recording. This type of conversation is no longer considered private, however, where the parties know that a police officer is present. *Lewis v. Dep't of Licensing*, 157 Wn.2d 446.

Officers should therefore announce their presence and the fact that the communication is being recorded where there are multiple individuals inside a private residence. In doing so, any ongoing conversation occurring after that announcement would not fall under the Washington Privacy Act or would otherwise be deemed consensual under the Privacy Act. RCW 9.73.030(3).

In some instances, a police officer may be asked to turn off the camera inside a private residence. The officer is not required to honor such request, but if the officer feels it is appropriate to do so, the officer should clearly document in the incident report the name of the individual making such request, the fact that the camera was turned off based on this request and any additional reasons for doing so.

L. Schools – No Need To Turn Camera Off

Officers should not turn off body cameras when called to incidents occurring on school campuses. Although body cameras could capture images of students interacting with commissioned officers, such interactions would be the product of law enforcement contact and would result, at most, in police reports and camera footage considered to be law enforcement records generated and maintained for evidentiary purposes. State law provides for ample protection of the identities of juveniles (both offenders and witnesses) referenced in any records related to the commission of juvenile crimes.

Parental permission is not required prior to the release of body camera videos depicting students in a school setting. No commercial purposes come into play when body cameras are worn by police upon entry into a school to enforce the laws or to provide security. Records will review all requested video relating to juvenile offenses and apply statutory redactions as required by law.

VI. REPORT WRITING

A. A Video Does Not Take The Place Of Writing A Report

While a picture “paints a thousand words”, it cannot answer the why’s of what is captured on camera or explain the decisions an officer makes in responding to an incident. Despite the value of a video, the most important evidence comes from the officer’s perception and recounting of an event. Officers should always prepare written reports to document an incident even if they wear body cameras.

B. The Report Should Always Reference The Existence Of A Video

It is critical that officers include in their reports that there is body camera video with the police incident. Without that indication, many bad things can happen. Prosecutors can be sanctioned for discovery violations if they fail to turn over video that they don’t know about. Sanctions sometimes include evidence being suppressed and criminal cases getting dismissed.

Additionally, when the police department fails to produce records because they didn’t know of the existence of the body camera, the City can be sanctioned for a public records violation at an enormous cost in civil penalties. The best reason to reference the video in the report, however, is to assist the Records Unit in

identifying the existence of videos. This makes their job much easier and shortens the time it takes to fulfill a request.

VII. CLASSIFYING THE VIDEO: ENSURING YOUR ABILITY TO LOCATE THE VIDEO SO IT CAN BE USED AS EVIDENCE.

A. Determining What Has Evidentiary Value

Everything resulting in a charging document has evidentiary value. This includes the most minor of civil or traffic infractions to the most serious of felony referrals to the prosecutor's office. Additionally, every call for service, including those resulting in no officer action (i.e. the "1D" disposition), have potential evidentiary value. If there is an incident number generated in CAD, officers should label the video to ensure that such video is retained according to departmental retention guidelines.

B. Using a Consistent Method of Labeling a Video

It is crucial that officers all use the same format in labeling their videos. When officers label videos in different ways, finding the videos becomes a game of "hide and seek" for Records, and it guarantees that the City will at some point lose the game and be sued for a public records violation.

All videos should be labeled with the two digit year followed by a dash and then the report number without preceding zeroes.

Example: 15-3245 (not 15-03245 or 15-003245)

This format is the key to Records being able to find the video. If the officer wishes, additional notes can be added into the notes field in Evidence.com indicating specifics about the case.